

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA ALLIANCE FOR FAIR COMPETITION	DOCKET NO. C-03-243
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**ORDER ACCEPTING STAFF REPORT, DENYING REQUEST
FOR AUDIT OF NONUTILITY SERVICES, AND DENYING REQUEST FOR
FORMAL COMPLAINT PROCEEDINGS**

(Issued January 5, 2005)

On October 21, 2003, the Iowa Alliance for Fair Competition (Iowa Alliance) filed with the Utilities Board (Board) a written complaint relating to services performed by MidAmerican Services, a competitive business division within MidAmerican Energy Company (MidAmerican). The complaint suggested that MidAmerican might not be complying with applicable law regarding cross-subsidization of nonutility services by rate-regulated gas and electric utilities. MidAmerican Services offers an extended service protection plan (ESP) for major appliances.

The Iowa Alliance is a group of heating and air conditioning contractors and associates. The Iowa Alliance stated in its complaint that its members regularly provide the same type of service, such as inspection, repair, and maintenance of heating and cooling equipment, as provided by MidAmerican Services. The Iowa Alliance questioned whether MidAmerican Services could perform the advertised services at the listed price unless it was using funds from sources other than revenue generated by the extended service protection plan. The Iowa Alliance asked that the Board order an audit of the transactions related to nonutility services.

Iowa Code § 476.81 grants the Board the authority to periodically audit nonutility services provided by rate-regulated electric or gas utilities. “Nonutility service” is defined by Iowa Code § 476.72(3) to include, among other things, the sale, lease, servicing, repair, or maintenance of gas or electric appliances and heating or cooling equipment. Iowa Code § 476.78 specifically prohibits cross-subsidization between the regulated utility and a division providing nonutility services. This section provides in part:

A rate-regulated gas or electric public utility shall not directly or indirectly include any costs or services attributable to providing nonutility service in regulated rates or charges.

On November 17, 2003, the Board issued an order requiring MidAmerican to submit additional information regarding any MidAmerican resources used by its affiliate in offering the ESP. MidAmerican filed responses on December 2, 2003.

The Board issued an order on January 16, 2004, inviting comments from interested parties on whether an audit should be performed. Responses were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) on March 17 and April 12, 2004, MidAmerican on May 14, 2004, and the Iowa Alliance on June 10, 2004.

The Board issued an order on September 20, 2004, stating that its staff would review the internal and external audit reports to see if there was any support for the Iowa Alliance's claim of cross-subsidization. In issuing that order, the Board noted that responses provided by MidAmerican on December 2, 2003, to the Board's inquiries of November 17, 2003, allayed several of the Board's concerns. The Board also said that no evidence had subsequently been filed to suggest cross-subsidization of nonutility services by the regulated utility. The Board was mindful of

the fact that an audit, which is paid for by MidAmerican pursuant to Iowa Code § 476.81, is expensive and would reduce the amount available to ratepayers under MidAmerican's approved revenue sharing plan. However, the Board also recognized that it was important that the Iowa Alliance and MidAmerican's other ratepayers be assured through an independent analysis that there is no cross-subsidization of nonutility services.

The Board found the best balancing of the various interests was to have its staff review the comprehensive internal and external audit reports referred to by MidAmerican in its response. Consumer Advocate was invited to participate in the review.

The Board's staff met with MidAmerican representatives on October 11, 2004, and began their review shortly thereafter. The staff completed its work on December 3, 2004, with a report to the Board entitled "MidAmerican Energy Company, Review of Extended Service Protection Plan, Regarding Docket No. C-03-243." The Board's staff was given full access to internal and external audit reports and supporting workpapers. It is important to emphasize that the external audit reports are prepared by independent auditing companies and that their review and final work product is not dictated by MidAmerican.

The staff review demonstrated that MidAmerican is following the Federal Energy Regulatory Commission's Uniform System of Accounts when recording costs of the ESP program. These costs are appropriately reported in non-regulated FERC accounts. MidAmerican's compliance with the FERC Uniform System of Accounts was verified by an independent auditor, Deloitte and Touche.

The staff review found no evidence of cross-subsidization. MidAmerican contracts for the ESP services with local contractors and pays them a percentage of the monthly fee charged to customers participating in the program. Approximately 41 contractors provide ESP services to MidAmerican's customers. Contractors provide all the parts, labor, and transportation for any covered repair. Participation rates are falling, from 19,000 customers in 1999 to 14,000 in 2003. MidAmerican said it was no longer actively marketing the program because deregulation of the electric industry did not occur as MidAmerican had anticipated.

MidAmerican's ESP program is one of its smaller non-regulated business units. MidAmerican does not keep any inventory on hand to support the program because all of the parts, labor, and transportation are handled by participating contractors. MidAmerican has one full-time employee working for the ESP program in a customer service function. This employee responds to inquiries and makes changes to the ESP customer accounts receivable and accounts payable to contractors. All of this employee's salary is charged to the ESP program. Thirteen other MidAmerican employees did some work for the ESP program in 2003 and the time they spent on ESP work was charged directly to the ESP program. None of their time spent on ESP was paid by MidAmerican's electric and gas ratepayers. For calendar year 2003, \$71,732.04 of payroll was charged to MidAmerican Services for administration of the program.

In summary, cost allocations are being made pursuant to the cost allocation manual approved by the Board. 199 IAC 33.5. There is no evidence of cross-subsidization. Because of the way the program is structured, MidAmerican Services uses few of MidAmerican's resources for the program, instead using outside

contractors to perform the bulk of the functions in return for a percentage of the monthly payments received from customers of the program. MidAmerican Services basically functions as an administrator of the program, and all of these costs are billed directly to the ESP program and not MidAmerican's regulated ratepayers. The rules the Board adopted regarding nonutility services are operating as intended, to prevent cross-subsidization of nonutility services by a regulated utility.

The Board accepts the staff report and will deny the Iowa Alliance's request for a separate, third-party audit. The staff review indicates an audit would be duplicative of work already being performed by independent auditors and that there is no evidence of cross- subsidization of the ESP program by MidAmerican. It is again important to emphasize that repair personnel, tools, and other equipment, including service trucks, are provided by the outside contractors. This minimizes any potential for cross-subsidization because MidAmerican Services only administers the program and does not perform any services under the ESP contracts.

The Board will treat the Iowa Alliance's filing as a request for formal complaint proceedings. Iowa Code § 476.3(1) (2003) provides, in part, that following informal complaint proceedings, "[t]he complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint." This is the standard the Board applies to requests for formal complaint proceedings.

All documents contained in the file of an informal complaint proceeding are part of the record. 199 IAC 6.7. Thus, in determining whether there is any reasonable ground for instituting formal complaint proceedings, the Board reviews the entire file. In reviewing the entire file, including the staff report, the Board finds

there are no reasonable grounds to institute formal complaint proceedings because there is no evidence of cross-subsidization.

IT IS THEREFORE ORDERED:

1. The staff report dated December 3, 2004, and entitled "MidAmerican Energy Company, Review of Extended Service Protection Plan, Regarding Docket No. C-03-243," is accepted.
2. The request for an audit of nonutility services filed by the Iowa Alliance for Fair Competition is denied.
3. The request for formal complaint proceedings filed by the Iowa Alliance for Fair Competition is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 5th day of January, 2005.